

**Remarks**

**I. Constructive Restriction Requirement**

The Examiner has argued that newly submitted claims 64 to 72 are drawn to a distinct invention and therefore an election must be made. The Examiner claims that the Applicant has previously elected Species I directed to the invention of Figure 1 which has a predetermined curvature of 0. Accordingly, Examiner states that Applicant has constructively elected the invention with a predetermined curvature of 0, thus claims 64-72 are withdrawn from consideration. Applicant respectfully disagrees and will treat Examiner's contentions as a constructive request for election/restriction requirement between Figure 1 and Figures 3a and 3b. Applicant maintains its previous election with traverse.

The Examiner has stated that one reason for the election requirement is that "examiner has examiner [sic] claims directed to a construction module with a predetermined curvature of 0 (or planar)." Applicant respectfully submits that this is not a valid reason for a restriction requirement. Restrictions are proper if the inventions are so distinct that they would require searching a different art. Here, there is no requirement to search a new art. Applicant intended for the new claims to be drawn to modules of non-planar curvature. Examiner has searched for planar modules. Both lie within one field of search: the field of construction modules composed of layers. The Examiner's choice to artificially restrict the search to only one subset of that field does not alter the fact that both planar and non-planar construction modules reside within the same field or art. Thus, a restriction requirement for the reason that Examiner has already searched a more restrictive field is improper. Applicant respectfully requests withdrawal of the election requirement on this ground.

Next, Examiner states that Applicant has constructively elected a species drawn to Figure 1, thus, claims drawn to a non-planar module, as shown in Figures 3a and 3b are not of the elected species and withdrawn. Applicant respectfully disagrees. Examiner required a restriction in the restriction request of June 19, 2007. That requirement requested an election drawn from four species: the species of Figure 1, the species of Figures 2a and 2b, the species of Figure 4 and the species of Figure 5. Notably, Examiner did not list Figures 3 as denoting a new

species. In addition, Examiner listed the reasons why each of the four species were independent or distinct. In each case, the Examiner stated that the species were distinct from each other based on the number and/or placement of the cavity within the panel. See 2007-06-09 Requirement for Restriction/Election, pages 3-4. The Examiner did not raise curvature, or lack thereof, as a feature that would render the invention independent or distinct. Thus, it is apparent that the Examiner did not consider Figures 3a and 3b to constitute an independent or distinct species. Rather, the Examiner properly recognized that Figures 3a and 3b constitute an additional embodiment of the invention.

In addition, Applicant cannot have elected the species of Figure 1 at the expense of the "species" of Figures 3a and 3b when that choice was not presented to Applicant in the restriction requirement. Applicant elected Species 1 in its response of July 2, 2007. Applicant's election was of a species with a unitary cavity between a top and bottom panel, as shown in Figure 1. (Or as stated in the restriction requirement, "a module with a cavity in only the intermediate panel[s].") It is immaterial to the definition of the elected species whether the resulting module has a planar or non-planar curvature. Therefore, Applicant respectfully submits that it has traversed Examiner's construction election requirement, because Applicant's election includes the embodiments of the invention illustrated in Figures 3a and 3b. Applicant requests consideration of all of the claims presented.

## II. 35 USC § 103 Claim rejection

The Examiner has rejected all of the pending claims as obvious over Klassel (US 5439749). In addition, the Examiner has noted that the newly added limitation of "having a predetermined curvature" is met by the prior art, because Klassel discloses planar modules and the newly added limitation does not distinctly claim that the "predetermined curvature" is non-planar.

The Examiner's obvious rejection is based on Klassel's Figures 1 and 3. Figure 1 shows a door with a sheet of glass in its center. Figure 3 demonstrates a panel having multiple layers, but without a cavity. In the Detailed Description of the Preferred Embodiments Klassel implies that

the door illustrated in Figure 1 can be constructed using the panels of Figure 3, thus forming a layered structure where the intermediate panel defines a cavity. See Klassel, 4:66-5:45. Klassel does not claim or otherwise describe in the specification any layered structures that include a cavity. Notably, the structure of Klassel includes a cavity that passes all the way through the structure, including the top and bottom layers. The structure claimed by the Applicant includes an enclosed cavity that does not include the top and bottom layers. Thus, the cavity of the Applicant is not visible in a complete module. This is important because Applicant's invention is intended to provide low cost, light weight, attractive panels for construction. The panel disclosed in Figures 1 and 3 of Klassel is inappropriate for this task because it can not provide panels that appear to be solid. Therefore, Applicant's invention is not disclosed by Klassel. Applicant has amended the claims to more distinctly point out that Applicant's invention includes an *enclosed* cavity that is not visible to inspection.

The Examiner has argued that Applicant's prior amendment of adding the limitation, "having a predetermined curvature," does not distinctly claim non-planar modules, since even planar modules may have a predetermined curvature of 0. Examiner further notes that panels of predetermined curvature of 0 are disclosed in Kassel, because Klassel discloses planar structures. Applicant agrees that the limitation "having a predetermined curvature" does not necessarily limit the claim to non-planar modules. Therefore, applicant has amended the claims to specify that the curvature is "non-planar", which limitation is fully consistent with Figure 3a and 3b

The prior art neither teaches nor suggests and non-planar curvature to the modules and the claims, as presently amended, should be considered allowable thereover.

III. Conclusion

Applicant submits that the application is now in condition for allowance and respectfully requests the same. In the event that there are any outstanding issues, the undersigned respectfully requests the courtesy of a telephonic interview.

Respectfully submitted,

/marvin h kleinberg/

MARVIN H. KLEINBERG  
Attorney for Applicant  
Reg. No. 18,402

KLEINBERG & LERNER, LLP  
1875 Century Park E., Suite 1150  
Los Angeles, CA 90067  
Telephone: (310) 557 1511  
Facsimile: (310) 557 1540  
e-mail: [patents@kleinberglerner.com](mailto:patents@kleinberglerner.com)